

301 APPROVAL OF EXCEPTIONS BY HEADQUARTERS DIVISION OF DESIGN, PROGRAM MANAGER

The Headquarters Division of Design, Program Manager (DLP), shall review and approve exceptions to Statewide policies and mandatory design standards that govern encroachments and access to encroachments within the State highway right of way.

The Headquarters Division of Design, Program Manager, is responsible for establishing procedures and guidelines governing the preparation of specific requests for variances and exceptions and the information that must be included in a request. Standard practice is to process all applications from written requests submitted to the Headquarters Division of Design, Program Manager. Prior approval is required if personal appearances by district personnel or the applicant are necessary. Encroachment proposals listed in Sections 302 and 303 are to be submitted with district recommendations signed by the District Division Chiefs of Project Development, Right of Way, Traffic Operations, and Maintenance. Requests submitted to the Headquarters Division of Design, Program Manager, for consideration of exceptions shall include the items listed in Table 3.1.

When possible, encroachment exceptions on the same project should be submitted in one presentation to allow a correct decision. If it is not possible to submit one presentation, the transmittal letter should explain fully why the cases must be submitted separately. Address all correspondence to the attention of the Headquarters Division of Design, Program Manager.

302 ENCROACHMENTS WITHIN ANY HIGHWAY RIGHT OF WAY (Rev 08/02)

Requests for the following encroachments shall be submitted by districts to the Headquarters Division of Design, Program Manager:

1. Facilities that limit use of the right of way and/or may add to Caltrans' costs in future construction.
2. Changes in facilities approved previously by the Headquarters Division of Design, Program Manager, when the proposed changes alter the conditions under which the original encroachment was approved.
3. Any grading, removal of cut material or placement of fill material within any right of way.
4. Encroachments associated with toll road demonstration projects.
5. Placing utility facilities within the median area of any State highway.
6. Allowing utilities to remain in an existing tunnel or tube that is incorporated into a new highway improvement.
7. Exceptions or changes to the standards described in Chapter 6.
8. Exceptions to high and low risk policies.
9. Drainage diversions.
10. Groundwater disposal.
11. Longitudinal private pipelines carrying gas, oil, or other flammable fluids that are operated under franchises with local agencies.

12. Locally franchised privately owned longitudinal facilities that are not dedicated for public use.

303 ENCROACHMENTS WITHIN FREEWAY AND EXPRESSWAY RIGHTS OF WAY

The Headquarters Division of Design, Program Manager is authorized by the Director, Department of Transportation to make determinations and rule on all matters regarding installation of encroachments on freeways and expressways. Matters concerning encroachments on conventional highways are delegated to the districts except as indicated under Section 302.

Specific requests for the following encroachments are submitted by the district to Headquarters Division of Design, Program Manager:

1. Encroachments requiring maintenance within the access control lines of freeways and expressways. This includes those installations created by rearrangement of existing facilities and those requested by utility owners or others under encroachment permit.
2. Longitudinal encroachments within the access control lines of freeways and expressways and on bridges other than highway overcrossing structures. Included are those longitudinal encroachments created by rearrangement of existing facilities, and those requested by utility owners under encroachment permits, including fiber optics facilities.
3. Encroachments requiring temporary or permanent access to or from through traffic lanes on freeways and expressways.
4. Encroachments involving installation of locked gates in freeway and expressway fences for other than Caltrans' use (see the Highway Design Manual).
5. Temporary use of controlled access right of way by private individuals or developers for grading.
6. Utility facilities that cross freeways should be as normal as possible to the freeway centerline. Facilities that are skewed greater than thirty degrees (30°) from the normal must have DLP approval as a longitudinal encroachment.
7. Longitudinal encroachments within a conventional highway that is upgraded to a freeway and remain within the access control lines, the utility facilities will normally be relocated outside the access control. When compelling reasons require such facilities to remain within the access control, the District must submit a request for exception to this policy, for each facility, to the Headquarters Division of Design, Program Manager.

304 APPEAL OF PERMIT DENIAL

304.1 Appeal to the District Director

When an encroachment permit is denied by the District Permit Engineer or a delegated representative, the applicant may appeal to the District Director within 60 days after permit denial. The District Director or a representative will attempt to resolve issues regarding the application. Denials should be made in writing and sent by certified mail.

The appeal process does not extend authority to District Directors to approve encroachments that are outside the limits of their normal authority, e.g., authorizing freeway encroachments, deviations from mandatory design standards of High and Low Risk policy, and lowering mandatory design standards. Before reaching resolution with the applicant involving such encroachments, the District Director must obtain approval from the appropriate decision-maker in Headquarters.

If issues are unresolved at the district level, the District Director will send (certified mail) a denial letter to the applicant. The letter must contain a detailed explanation of the reasons for the denial and advise the applicant that the district's denial may be appealed to the Director of Caltrans as provided in Section 671.5 of the Streets and Highways Code, which was amended to convey this right as of January 1, 1994.

The District Director's denial letter should also provide the applicant with the following information:

1. The Caltrans' Director is the final step in the appeal process.
2. Name and address of the Caltrans' Director in the format shown below:

 (Director's Name)
 Director
 California Department of Transportation
 1120 N Street
 Sacramento, CA 95814
3. The applicant is responsible for submitting the appeal to the Director in writing. The submittal shall include three copies of all pertinent information including any drawings.
4. The appellant may, in addition to the written submittal, make a presentation to the Director or the Director's representative.
5. The applicant will be required to pay up to 50 % of the administrative cost of conducting the appeal regardless of the outcome of the appeal. Upon filing the appeal with the Director, a deposit of \$500 will be required. A final accounting of the administrative costs will be made following resolution of the appeal. At that time some of the deposit may be returned or additional charges may be owed.

 The administrative charges will begin on the date the appeal is received by the Director and end on the date that a letter is sent from the Director to the applicant advising him or her of a decision. Charges will include both district and Headquarters staff time expended on the appeal.
6. The applicant will have 60 calendar days from the date of receipt of the District Director's denial within which to submit a written appeal to the Caltrans' Director. This time period can be extended by the mutual consent of the applicant and the District Director.

Table 3.1
Items To Be Included with Requests for Exceptions (Rev 11/04)

Number of Copies

1. Normally, submit two copies of each request, with attachments.
2. One additional copy shall be submitted if the encroachment involves a bridge or tunnel.

General Information

1. District, county, route, PM, project scope, cost, and schedule.
2. Accident history (if applicable).
3. If applicable, proof of prior or superior property rights, such as: fee ownership, easements, Joint Use Agreements (JUA), or Consent to Common Use Agreements (CCUA). Prior rights must be confirmed by the District Utilities Coordinator.
4. Is the highway an eligible or officially designated Scenic highway? If so, submit a letter from the Local Agency stating that potential visual impacts from the proposed projects are acknowledged.

Materials

The following documents are required for a district to start the review process and consider the request. [All items should be included, and action may be delayed until such information is furnished. Fold all attachments to 8.5" x 11"].

1. A statement that the district considered a lease arrangement under Air Space Development.
2. An index map. This map should be a print of a small scale key map outlining the general alignment of the freeway, crossroads, frontage roads, ramps, and the major geographic features.
3. A plan (in English units drawn on 22" by 36" at 1"=50' scale or 1"=20' scale when appropriate) showing a geographic outline of the following:
 - The pavement and shoulder edges of the freeway, expressway or highway, crossroads, collector roads, and ramps. It also should show all adjacent roads or streets, including proposed or existing frontage roads to which the facilities may be reasonably moved.
 - Right of way and access denial lines.
 - Present and proposed location of utilities, and physical features that affect the proposed location. (Use a dashed colored line to show existing facilities and a solid line in the same color for relocated position of the facility.)
 - Trace of slope catch points.
 - Fencing and location of locked gates where access is proposed.
 - Location of existing drainage facilities.
 - Other features, such as topography, where pertinent.
 - The plan need not be a special drawing; copies of project drawings are suitable. Whenever feasible, the plan should be an 11 inch high strip map as long as necessary to show the entire encroachment. However, separate sheets will suffice.
4. The Interstate number when Interstate projects are involved.
5. On controlled access routes, a statement explaining federal participation in right of way purchase or construction cost.
6. Profiles, cross sections, and contour grading, if necessary to clarify design.
7. A list of all utility facilities that are located within the limits of a proposed highway project that involves longitudinal encroachments.
8. A full explanation of the route and method by which the permittee will gain ingress and egress to the encroaching facility.
9. A statement indicating if utility facilities must be relocated to permit construction, and if the utility might be allowed to remain in place during the initial construction but would require relocation for the ultimate construction.
10. A statement indicating if allowing a utility facility to remain within the right of way would present a serious safety problem or would cause highway maintenance problems.
11. The district's recommendation regarding disposition of a utility facility.
12. A full explanation of the available alternatives to the proposed encroachment, together with costs and potential consequences if the requested encroachment is not approved.
13. Estimated savings to the State that would accrue by proceeding as proposed.
14. Status of environmental clearance.
15. Concurrence by Structures Maintenance when structures are involved.
16. Signature approval of the Division Chiefs for Project Development, Right of Way, Traffic Operations, and Maintenance in the district.

304.2 Appeal to the Department Director

An applicant may appeal the District Director's denial of an encroachment permit to the Director of Caltrans within 60 calendar days from the date of receipt of the District Director's denial. The District Permit Engineer is responsible for advising the applicant that the written appeal, as a minimum, must contain the following information:

1. The appellant's name, company or organization, telephone number and address or the appellant's agent's name, telephone number, and address.
2. The project's location (preferably this information includes: district: county, route, and post mile).
3. Project description including any pertinent plans or drawings (minimum 3 copies each).
4. The appellant's reasons as to why the proposed project or activity should be permitted.
5. A \$500.00 deposit towards the appellant's fifty percent share of the cost of the appeal.
6. Whether or not a presentation is planned.

The Director of Caltrans or the Director's representative will make a final determination and notify the appellant, in writing, within 60 calendar days after receipt of the written appeal.

When the appeal process is completed, the appellant will be billed 50% of the administrative costs less the \$500 deposit. Should administrative costs be less than the original \$500 deposit, the appellant is refunded the balance.